

LIPSIUS - BENHAIM  
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DAVID BENHAIM  
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October 25, 2012

**VIA ECF**

Honorable Lois Bloom  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

**Re: Shirley Wrubel v. John Hancock Life Ins. Co.  
Docket No. 11-cv-01873 (WFK) (LB)  
Our File No. 4206.0002**

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Dear Honorable Judge Bloom:

We represent the plaintiff in the above referenced matter. We write in response to John Hancock Life Insurance Company's ("John Hancock") letter dated October 22, 2012 seeking leave to file a motion to preclude and/or compel discovery.

John Hancock's claim that Shirley Wrubel has not complied with discovery obligations concerning her birth certificate or IRS forms is categorically untrue.

Shirley Wrubel twice executed IRS Form 4506 for John Hancock as part of discovery in this action. First, on January 4, 2012, Wrubel submitted the forms and delivered them to counsel for John Hancock by personal delivery. See, Exhibit A. At that time, John Hancock did not ask for anything else.

In May 2012, John Hancock was advised by the IRS that it required Ms. Wrubel's birth certificate and a newly executed Form 4506 and, on May 15, 2012, counsel for John Hancock supplied us with a copy of an application for a birth certificate. See, Exhibit B.

On June 20, 2012, six days after this Court ordered Ms. Wrubel to produce her birth certificate and another Form 4506, our client produced the one birth certificate she had within her possession and control and another Form 4506. See, Exhibit C. At that time, Ms. Wrubel also completed the form that John Hancock's attorney supplied to Ms. Wrubel on May 15, 2012 and submitted it to the State.<sup>1</sup> See, Exhibit D.

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<sup>1</sup> John Hancock promised to reimburse Ms. Wrubel the \$45 it cost to order her birth certificate but it has not.

LIPSIUS-BENHAIM LAW, LLP

Honorable Lois Bloom  
October 25, 2012  
Page 2

On July 23, 2012, we received the reply the New York State Department of Health sent to Ms. Wrubel. See, Exhibit E. The form advised Ms. Wrubel to call them at (212) 693-9675. Ms. Wrubel did as she was told in the letter, and called the number. She advised us that she had ordered her birth certificate over the phone and we were simply waiting for her birth certificate to arrive.

Accordingly, we advised counsel for John Hancock that Ms. Wrubel ordered her birth certificate and advised this Court that we will not object to John Hancock using the form in order to obtain Ms. Hollander's tax records even though discovery has closed. John Hancock's letter of October 22, 2012 is the first time anyone has alleged to us that one cannot obtain a birth certificate over the phone.

Preclusion is a drastic remedy that was clearly not intended to apply in Ms. Wrubel's situation. Ms. Wrubel has demonstrated a clear willingness to go beyond the requirements of the Federal Rules in order to accommodate John Hancock's requests. Ms. Wrubel supplied the only birth certificate she maintained in her possession and control, twice executed the IRS form requested by John Hancock and ordered her birth certificate, each time following the instructions given to her by John Hancock. She also believed she had ordered her birth certificate over the phone a second time. Accordingly, preclusion is unwarranted.

Finally, John Hancock's claim that no documents have been produced to support Ms. Wrubel's claim that Ms. Hollander was invested in real estate is inaccurate. Ms. Wrubel has produced multiple documents, including a closing statement to a property in Brooklyn which corroborates Ms. Hollander's involvement and an arbitration award in which Ms. Hollander was awarded \$1 million for her share in the investment, a portion of which was used to purchase the policies that are at issue in this litigation.

We respectfully thank the court for taking the opportunity to address this matter.

Respectfully submitted,

LIPSIUS-BENHAIM LAW, LLP



David BenHaim

DB:bl  
Enclosures

# **EXHIBIT A**



David BenHaim &lt;dbenham@lipsiuslaw.com&gt;

**Wrubel v JH; 4421.0002****David BenHaim** <dbenham@lipsiuslaw.com>  
To: sflanagan@kelleydrye.com

Wed, Jan 4, 2012 at 4:38 PM

Sean,

I handed over 2 copies of the IRS 4506 forms signed by Shirley Wrubel to Vinny from Delux for delivery to you.

I also spoke to Shirley about holding the deposition at 9:30 am on 1/11 and she advised that she cannot make it until 10:30. She is willing to stay later, if necessary.

We will be accepting service of a subpoena of deposition notices for Jacobowitz and Goldberger and will shortly provide you with available dates for those depositions.

We earlier stated that the Trust possessed additional documentation concerning the nature of the business relationship between Jacobowitz and Hollander. We have now learned that those documents are solely in the possession and control of Jacobowitz and not Wrubel. As we anticipate these documents will be responsive to the subpoena on Jacobowitz, we have begun making arrangements for the production of those records from Jacobowitz.

Additionally, earlier today you stated that JH produced a CD with audio. I advised that I did not recall seeing one and you kindly offered a replacement. Since our conversation I found your cover letter that accompanied the CD but not the CD itself. We would like to send someone tomorrow to pick up a replacement cd. Will 12 noon work?

Regards,

David

David BenHaim, Esq.  
Lipsius - BenHaim Law LLP

80-02 Kew Gardens Rd., Suite 1030 | Kew Gardens, NY 11415

Tel: 212.981.8446 | Fax: 212.695.6602

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## **EXHIBIT B**



David Benhaim &lt;dbenham@lipsiuslaw.com&gt;

**RE: Wrubel****Flanagan Sean** <SFlanagan@kelleydrye.com>

To: David Benhaim &lt;dbenham@lipsiuslaw.com&gt;

Cc: Linda Sapienza &lt;lsapienza@lipsiuslaw.com&gt;, "Ira S. Lipsius" &lt;iral@lipsiuslaw.com&gt;

Tue, May 15, 2012 at 12:09 PM

David,

Here is (i) an application for the birth certificate which Ms. Wrubel needs to fill out and sign. The application also requires that copies of two forms of id accompany the application: a photo id and a utility bill or letter from the government (dated within the last 6 months) showing her address; and (ii) a Form 4506 Request for a copy of the Tax Return which Ms. Wrubel needs to sign.

Thanks,

Sean

**From:** David Benhaim [mailto:[dbenham@lipsiuslaw.com](mailto:dbenham@lipsiuslaw.com)]**Sent:** Monday, May 14, 2012 7:09 PM**To:** Flanagan Sean**Cc:** Linda Sapienza; Ira S. Lipsius**Subject:** RE: Wrubel

Yes, Rubin will appear at your office on Wednesday at 10 am.

The links below are not clear. Would you kindly provide me with the actual documents you would like Ms. Wrubel to sign and I will get them signed for you.

**David BenHaim, Esq.****Lipsius - BenHaim Law LLP**

80-02 Kew Gardens Rd., Suite 1030 | Kew Gardens, NY 11415

Tel: 212.981.8446 | Fax: 888.442.0284

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**From:** Flanagan Sean [mailto:[SFlanagan@KelleyDrye.com](mailto:SFlanagan@KelleyDrye.com)]**Sent:** Monday, May 14, 2012 10:20 AM**To:** 'David Benhaim'**Subject:** Wrubel

David,

I just want to confirm that we are going forward with Mr. Rubin's deposition Wednesday at 10 am here at KDW. I am also assuming that



Also, below is the information for Ms. Wrubel to order the IRS records for her mother. We need Ms. Wrubel's birth certificate and a signed form 4506 to send to the IRS. Please provide us with this information this week. We will, of course, re-imburse Ms. Wrubel for the cost of the birth certificate and expedited shipping.

<http://www.vitalchek.com/birth-certificates/new-york/ny-state-vital-records>

<http://www.irs.gov/pub/irs-pdf/f4506.pdf>

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**Sean R. Flanagan**  
**Kelley Drye & Warren LLP**  
101 Park Avenue, New York, NY 10178  
212.808.7584 | (fax) 212.808.7897 | [sflanagan@kellydrye.com](mailto:sflanagan@kellydrye.com)  
[www.kellydrye.com](http://www.kellydrye.com)

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## 2 attachments

 Birth Certificate Application.pdf  
92K

# **EXHIBIT C**



David Benhaim <dbenhaim@lipsiuslaw.com>

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## Wrubel

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**David Benhaim** <dbenhaim@lipsiuslaw.com>  
To: Flanagan Sean <SFlanagan@kelleydrye.com>

Wed, Jun 20, 2012 at 3:18 PM

Sean,

Here is a copy of the birth certificate that Wrubel found and a copy of the irs form. Do you want the originals? The original has a Maimonides seal. Do you want her to fill out the form required to obtain a new birth certificate?

David BenHaim, Esq.  
Lipsius - BenHaim Law LLP  
80-02 Kew Gardens Rd., Suite 1030 | Kew Gardens, NY 11415  
Tel: 212.981.8446 | Fax: 888.442.0284

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### 2 attachments

FAX\_20120620\_1340215416\_28.pdf  
108K

4506 Wrubel.pdf  
468K

© 2008 US

THIS IS TO CERTIFY

THAT ON THE

First \_\_\_\_\_ DAY OF July : 19 SAT 7:25 A.M.

Shirley Rebecca Hollander

WAS BORN AT

*Maimonides*  
HOSPITAL OF BROOKLYN

IN WITNESS WHEREOF, THIS CERTIFICATE IS ISSUED AND COUNTERSIGNED BY

*D.F. Karpinski*  
D.F. Karpinski, M.D.  
ATTENDING PHYSICIAN

Affiliated with the  
Federation of Jewish Philanthropies of New York

DR. *J. Schatzky*  
J. Schatzky, M.D.  
EXECUTIVE DIRECTOR

Form **4506**

(Rev. January 2012)

Department of the Treasury  
Internal Revenue Service**Request for Copy of Tax Return**

OMB No. 1545-0429

► Request may be rejected if the form is incomplete or illegible.

**Tip.** You may be able to get your tax return or return information from other sources. If you had your tax return completed by a paid preparer, they should be able to provide you a copy of the return. The IRS can provide a Tax Return Transcript for many returns free of charge. The transcript provides most of the line entries from the original tax return and usually contains the information that a third party (such as a mortgage company) requires. See Form 4506-T, Request for Transcript of Tax Return, or you can quickly request transcripts by using our automated self-help service tools. Please visit us at IRS.gov and click on "Order a Transcript" or call 1-800-908-9946.

1a Name shown on tax return. If a joint return, enter the name shown first.	1b First social security number on tax return, individual taxpayer identification number, or employer identification number (see instructions)								
2a If a joint return, enter spouse's name shown on tax return.	2b Second social security number or individual taxpayer identification number if joint tax return								
3 Current name, address (including apt., room, or suite no.), city, state, and ZIP code (see instructions)									
4 Previous address shown on the last return filed if different from line 3 (see instructions)									
5 If the tax return is to be mailed to a third party (such as a mortgage company), enter the third party's name, address, and telephone number.									
<p><b>Caution.</b> If the tax return is being mailed to a third party, ensure that you have filled in lines 6 and 7 before signing. Sign and date the form once you have filled in these lines. Completing these steps helps to protect your privacy. Once the IRS discloses your IRS return to the third party listed on line 5, the IRS has no control over what the third party does with the information. If you would like to limit the third party's authority to disclose your return information, you can specify this limitation in your written agreement with the third party.</p>									
<p>6 Tax return requested. Form 1040, 1120, 941, etc. and all attachments as originally submitted to the IRS, including Form(s) W-2, schedules, or amended returns. Copies of Forms 1040, 1040A, and 1040EZ are generally available for 7 years from filing before they are destroyed by law. Other returns may be available for a longer period of time. Enter only one return number. If you need more than one type of return, you must complete another Form 4506. ► <input type="checkbox"/></p> <p><b>Note.</b> If the copies must be certified for court or administrative proceedings, check here <input type="checkbox"/></p>									
<p>7 Year or period requested. Enter the ending date of the year or period, using the mm/dd/yyyy format. If you are requesting more than eight years or periods, you must attach another Form 4506.</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">12/31/2006</td> <td style="width: 25%;">12/31/2007</td> <td style="width: 25%;">12/31/2008</td> <td style="width: 25%;">12/31/2009</td> </tr> <tr> <td>12/31/2010</td> <td>12/31/211</td> <td colspan="2"></td> </tr> </table>		12/31/2006	12/31/2007	12/31/2008	12/31/2009	12/31/2010	12/31/211		
12/31/2006	12/31/2007	12/31/2008	12/31/2009						
12/31/2010	12/31/211								

8 Fee. There is a \$57 fee for each return requested. Full payment must be included with your request or it will be rejected. Make your check or money order payable to "United States Treasury." Enter your SSN or EIN and "Form 4506 request" on your check or money order.	\$ <b>\$57.00</b>
a Cost for each return	\$ <b>\$57.00</b>
b Number of returns requested on line 7	\$ <b></b>
c Total cost. Multiply line 8a by line 8b	\$ <b></b>

9 If we cannot find the tax return, we will refund the fee. If the refund should go to the third party listed on line 5, check here <input type="checkbox"/>
--

**Caution.** Do not sign this form unless all applicable lines have been completed.

**Signature of taxpayer(s).** I declare that I am either the taxpayer whose name is shown on line 1a or 2a, or a person authorized to obtain the tax return requested. If the request applies to a joint return, either husband or wife must sign. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, trustee, or party other than the taxpayer, I certify that I have the authority to execute Form 4506 on behalf of the taxpayer. Note. For tax returns being sent to a third party, this form must be received within 120 days of the signature date.

Sign  
Here► Shirley Wuebhel

Signature (see instructions)

| 6/18/12

Date

Phone number of taxpayer on line  
1a or 2a

► Title (if line 1a above is a corporation, partnership, estate, or trust)

► Spouse's signature

Date

# **EXHIBIT D**



David Benhaim &lt;dbenhaim@lipsiuslaw.com&gt;

**RE: Wrubel****David Benhaim** <dbenhaim@lipsiuslaw.com>

Wed, Jun 27, 2012 at 10:01 AM

To: Flanagan Sean &lt;SFlanagan@kelleydrye.com&gt;

Cc: "Ira S. Lipsius" &lt;iral@lipsiuslaw.com&gt;, Linda Sapienza &lt;lsapienza@lipsiuslaw.com&gt;

Sean,

We will take Ms. Siu as a fact witness on July 11<sup>th</sup>.

Although we interpret Judge Bloom's order to require Shirley to supply her birth certificate and not order one and therefore, it is our position that Ms. Wrubel has complied with the order, she did place an order for her birth certificate and requested it on an expedited basis. The cost to her was \$45. I propose we take Ms. Wrubel's continued deposition on July 5 or 6 in the morning. Do either of those dates work for you?

**David BenHaim, Esq.****Lipsius - BenHaim Law LLP**

80-02 Kew Gardens Rd., Suite 1030 | Kew Gardens, NY 11415

Tel: 212.981.8446 | Fax: 888.442.0284

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**From:** Flanagan Sean [mailto:SFlanagan@KelleyDrye.com]**Sent:** Tuesday, June 26, 2012 7:21 PM**To:** 'David Benhaim'**Cc:** Ira S. Lipsius**Subject:** Wrubel

David,

Please see the attached letter confirming the John Hancock depositions the week of July 9. Also, please let me know when Ms. Wrubel would be available for her continued deposition. Finally, please let me know tomorrow the status of Ms. Wrubel's retention of her birth certificate, we do not want to write the Court, but will have to if we do not hear from you.

Regards,  
Sean

---

**Sean R. Flanagan**  
**Kelley Drye & Warren LLP**  
101 Park Avenue, New York, NY 10178  
212.808.7584 | (fax) 212.808.7897 | sflanagan@kelleydrye.com  
www.kelleydrye.com

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# EXHIBIT E



David BenHaim <dbenham@lipsiuslaw.com>

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**RE: Wrubel**

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David BenHaim <dbenham@lipsiuslaw.com>  
To: Flanagan Sean <SFlanagan@kelleydrye.com>

Mon, Jul 23, 2012 at 5:32 PM

Sean,

Ms. Wrubel received the attached in response to her request for her birth certificate. If there is something you would like her to do kindly let me know.

David BenHaim, Esq.  
Lipsius - BenHaim Law LLP  
80-02 Kew Gardens Rd., Suite 1030 | Kew Gardens, NY 11415  
Tel: 212.981.8446 | Fax: 888.442.0284

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**From:** Flanagan Sean [mailto:SFlanagan@KelleyDrye.com]  
**Sent:** Tuesday, May 15, 2012 12:10 PM  
**To:** 'David Benhaim'  
**Cc:** Linda Sapienza; Ira S. Lipsius  
**Subject:** RE: Wrubel

David,

Here is (i) an application for the birth certificate which Ms. Wrubel needs to fill out and sign. The application also requires that copies of two forms of id accompany the application: a photo id and a utility bill or letter from the government (dated within the last 6 months) showing her address; and (ii) a Form 4506 Request for a copy of the Tax Return which Ms. Wrubel needs to sign.

Thanks,

Sean

---

**From:** David Benhaim [mailto:dbenham@lipsiuslaw.com]  
**Sent:** Monday, May 14, 2012 7:09 PM  
**To:** Flanagan Sean  
**Cc:** Linda Sapienza; Ira S. Lipsius  
**Subject:** RE: Wrubel

Yes, Rubin will appear at your office on Wednesday at 10 am.

The links below are not clear. Would you kindly provide me with the actual documents you would like Ms. Wrubel to sign and I will get them signed for you.

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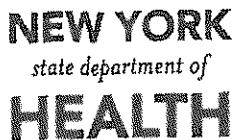
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 SKMBT\_42312072313360.pdf  
54K



Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

7/5/2012

SHIRELY WRUBEL  
198 WILSON STREET  
APT 3B  
BROOKLYN, NY 112211

Reference Number: C121876512

Dear SHIRELY WRUBEL,

Thank you for submitting your request to the New York State Department of Health. At this time, we are unable to accommodate your request. Please review the information below and take the appropriate action as indicated.

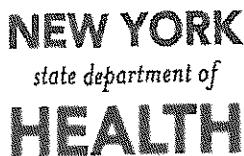
The birth certificate for Shirley Hollander cannot be processed for the following reason(s):

\*\* The New York State Department of Health cannot process requests for births, deaths, or marriages that occurred in New York City. Please review the enclosed letter titled 'New York City Requests' for instructions on how to request a certificate from the New York City Department of Health.

Thank you for your cooperation,

New York State Department of Health  
Vital Records Section  
Certification Unit  
PO Box 2602  
Albany, NY 12220-2602  
(518) 474-3077

hjn



Nirav R. Shah, M.D., M.P.H.  
Commissioner

Sue Kelly  
Executive Deputy Commissioner

SHIRELY WRUBEL  
198 WILSON STREET  
APT 3B  
BROOKLYN, NY 112211

7/5/2012

### New York City Requests

Reference number: C121876512

New York City birth, death or marriage records are not available through the New York State Department of Health. For information about New York City records call (212) NEW YORK or (212) 639-9675.

Requests for copies of birth and death records for events which occurred in one of the five boroughs of New York City should be sent to:

New York City Department of Health and Mental Hygiene  
Office of Vital Records  
125 Worth Street, CN-4, Room 133  
New York, NY 10013

For on line information, visit <http://nyc.gov/health>

Requests for copies of marriage records on file within the five boroughs of New York City should be sent to:

City Clerk of New York  
141 Worth Street  
New York, NY 10013  
Att: Record Room

For on line information, visit <http://www.cityclerk.nyc.gov/>

Requests for copies of New York City birth records prior to 1910, death records prior to 1949, and marriage records prior to 1930 should be sent to the New York City Municipal Archives:

New York City Municipal Archives  
31 Chambers Street  
New York, NY 10007

For on line information, visit <http://www.nyc.gov/records>